

REMARKS/ARGUMENTS

The present response replies to the final Office Action dated May 28, 2009. Claims 1-33 are pending in the present application. Claims 11-32 were previously withdrawn. In the Office Action, the Examiner rejected claims 1-10 and 33 on various grounds. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

Response to Amendment

The Examiner noted that the declaration filed on September 22, 2008, under 37 CFR 1.131 is ineffective to overcome the Rypacek, *et al.* reference (US 2003/0219562) because the declaration was not signed by inventor Peiwen Cheng. A declaration signed by inventors Rangarajan Sundar and Peiwen Cheng is submitted herewith in response to the Examiner's acknowledgement in the final Office Action dated May 28, 2009, of the supplemental oath/declaration filed February 26, 2009, amending the inventorship to include Peiwen Cheng. The Applicants respectfully request that the declaration be admitted under 37 CFR 1.116(e), and submit that the declaration is necessary to overcome the Rypacek, *et al.* reference and was not earlier presented because the inventorship was not yet corrected to include Peiwen Cheng.

Double Patenting

The Examiner noted the provisional rejection of claims 1-10 and 33 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 and 33 of copending application 10/827,817. Because the copending claims of application 10/827,817 may change during prosecution, the Applicants will consider filing a terminal disclaimer when the present application is otherwise in condition for allowance.

35 U.S.C. §102 Rejections

Claims 1-10 and 33 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2003/0219562 to Rypacek, *et al.* (the *Rypacek* publication).

According to 37 CFR 1.131(a), “[w]hen any claim of an application … is rejected, the inventor of the subject matter of the rejected claim… may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.”

The Applicants hereby traverse the 35 U.S.C. §102(e) rejection and respectfully submit an affidavit of inventors Rangarajan Sundar and Peiwen Cheng with supporting material that establishes invention of the subject matter of the rejected claims prior to the effective date of the *Rypacek* publication, with supporting material attached as Exhibit A.

Withdrawal of the rejection of claims 1-10 and 33 under 35 U.S.C. §102(e) is respectfully requested.

Conclusion

For the foregoing reasons, Applicants believe all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

/Anthony A. Sheldon, Reg. No. 47,078/
Anthony A. Sheldon
Registration No. 47,078
Attorney for Applicants

Medtronic Vascular, Inc.
3576 Unocal Place
Santa Rosa, CA 95403
Facsimile No.: (707) 543-5420